

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SECOND DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 19548 of 2004

Between:

Agrasen Coop.Urban Bank Limited, Rep. by its Assistant Branch Manager Sri
Anand Agarwal, S/o. Sri Lakshminarayan Ji, having its office at 15-2-391/392/1,
Siddiamber Bazar, Hyderabad.

..... PETITIONER

AND

1 M/s.Balaji Steel Syndicate, Rep. by its Proprietor Sri

Ramchander Goel (died per L.Rs.the petitioners No.2&3)

2 Rajendra Prasad Goel, S/o. Late Ramchander Goel,
R/o Plot No.45, Babu Badh Colony, P.G.Road, Secunderabad.

3 Naval Kishore Goel, S/o. Late Ramchander Goel,
Flat No.106, Uma Towers, Sindhi Colony, P.G.Road,

Secunderabad.

4 Smt.Savitri Devi Goel, W/o. Rajender Kumar Goel,
R/o. Plot No.45, Babu Badh Colony, P.G.Road,

Secunderabad.

5 Smt.Nirmala Bai, W/o. Naval Kishore Goel,
Flat No.106, Uma Towers, Sindhi Colony, P.G.Road,
Secunderabad.

6 Deputy Registrar of Coop. Societies/Divisional Coop. Officer,

Golconda Division, Hyderabad.

7 A.P.Cooperative Tribunal, Rep. by its Chairman,

Chandra Vihar Buildings, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or direction more so in the nature of writ of certiorari by calling for the records and quash the impugned order in I.A.No.1250 of 2004 in CTA.SR.No.6055 of 2004 on the file of A.P.Cooperative Tribunal at Hyderabad.

Counsel for the Petitioner: MR.RUPENDRA MAHENDERA

Counsel for the Respondent Nos.3 and 5: MR. DEEPAK KRISHNA

Counsel for the Respondent Nos.2 and 4: MR. SHYAM S.AGARWAL

Counsel for the Respondent Nos.6 and 7: GP FOR COOPERATION

The Court at the admission stage made the following :

ORDER:

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This writ petition is filed challenging the order, dated 14.10.2004, passed by the A.P. Co-operative Tribunal, Hyderabad, in I.A.No.1250 of 2004 in C.T.A.(SR).No.6055 of 2004, since numbered as C.T.A.No.282 of 2004.

The petitioner is a Cooperative Urban Bank. It advanced loan to the first respondent, who is since dead. It initiated proceedings before the 6th respondent for recovery of the amount. Respondents 2 and 3, sons of Respondent No.1, were brought on record as legal representatives. Respondents 4 and 5 are the guarantors for the transaction. On a consideration of the material before him, the 6th respondent passed an award, dated 09.07.2004, holding that respondents 2 to 5 are jointly and severally liable to pay a sum of Rs.38,38,477/-. A certificate of recovery was also issued on the same day.

Respondents 2 to 5 filed an appeal before the Tribunal, the 7th respondent herein. They also filed an application for interim order as provided for under sub-Section (6)

of Section 76 of the A.P.Co-operative Societies Act (for short 'the Act') read with Rule 11 of A.P.Co-operative Tribunal Rules. Through the impugned order, the 7th respondent granted an absolute stay, but permitted the petitioner to proceed against the properties, if any, left by the deceased/first respondent.

Learned counsel for the petitioner submits that the Tribunal failed to take into account the principles underlying the grant of interim orders in appeals preferred against money decrees or awards. He contends that the respondents are jointly and severally liable to pay the amount determined under the award and granting absolute stay would cripple the business and functioning of the petitioner.

Learned counsel for respondents 2 to 5, on the other hand, submits that the first respondent did not leave any property to be inherited by respondents 2 and 3 and that the liability of respondents 4 and 5 ceased to exist on account of variation of the contract by the deceased/first respondent.

It is not in dispute that the 1st respondent availed loan from the petitioner and respondents 4 and 5 stood as guarantors. After adjudication of the matter before him, the 6th respondent found that a sum of Rs.38,38,477/- remained unpaid and a recovery certificate, almost in the form of a decree, was issued. Respondents 2 to 5 availed the remedy of appeal. Sub-Section (6) of Section 76 of the Act empowers the appellate Tribunal to grant interim orders. The further details as to the exercise of such power are provided for under Rule 11. The contention of the learned counsel for respondents 2 to 5 that the condition referred to in Rule 11 is applicable only to those cases, where the allegations as to misappropriation are made, is difficult to be accepted. Further, a perusal of the said provisions as well as Rule 12 does not indicate that the Tribunal can pass unconditional absolute orders, even in cases relating to recovery of amount.

It is almost a settled principle of law that in money decrees, irrespective of their value, the appellate authority or the Court has to protect the interests of both the parties and almost as a normal rule, 50% of the amount under the decree or order is required to be paid, as a condition for grant of stay. The question, as to whether

respondents 2 and 3 have inherited any property from the first respondent or whether the liability of respondents 4 and 5 ceased to exist on account of the alleged variation of the contract, needs to be considered at the hearing of the appeal.

Taking the totality of the circumstances into account, this Court is of the view that ends of justice would be met, if respondents 2 to 5 are required to pay a sum of Rs.10,00,000/-(Rupees ten lakhs only), as a condition for grant of stay.

Hence, the writ petition is allowed and the order in I.A.No.1250 of 2004 is modified to the extent that the stay of execution of the award against respondents 2 to 5 shall be subject to the condition that they shall deposit a sum of Rs.10,00,000/- within four weeks. In default, the stay shall stand vacated. There shall be no order as to costs.

02.12.2004

Note: Issue C.C. in three days.

(B/o)

Jsu

To

1 Deputy Registrar of Coop. Societies/Divisional Coop. Officer,

Golconda Division, Hyderabad.

2 The Chairman, A.P.Cooperative Tribunal,

Chandra Vihar Buildings, Hyderabad.

3 2 CCs to the Government Pleader for Cooperation, High

Court Buildings, Hyderabad. (O.U.T).

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